

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4930 of 1989

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

BHAVIN KANAIYALAL GANDHI

Versus

STATE OF GUJARAT

Appearance:

MR NR SAHANI for MR BIPIN I MEHTA for Petitioner
MR RJ OZA for Respondent No. 1, 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 11/07/2000

ORAL JUDGEMENT

Heard the learned advocate Mr. Sahani. Draft
amendment is allowed. No body is present on behalf of
the respondents.

The petitioner, an Assistant Lecturer, challenges the order dated 7th January, 1989 whereby his service has been terminated. It appears that by order dated 12th October, 1985 made by the Principal, Sir Bhavsinhji Polytechnic Institute, Bhavnagar, the respondent no. 3 herein, the petitioner was appointed as Assistant Lecturer against the post of Lecturer. His appointment was ad hoc for a period of 11 months or till the person duly selected by Gujarat Public Service Commission [hereinafter referred to as, 'the Public Service Commission'] was made available. It appears that this stop gap arrangement continued till 7th April, 1989, the date on which the impugned order of termination was made. Feeling aggrieved, the petitioner has preferred the present petition.

Mr. Sahani has submitted that the petitioner was appointed as Assistant Lecturer in Class-III service and no consultation with the Public Service Commission was required to be made nor the selection was required to be made by the Public Service Commission. The petitioner's appointment order was regularly made after due interview. The petitioner's service, therefore, could not have been terminated. Besides, there were many other Assistant Lecturers appointed on ad hoc basis who were continued in service after the petitioner's service was terminated. The action was arbitrary and requires to be quashed. Mr. Sahani has relied upon the draft amendment dated 10th July, 2000. It is contended that since the termination of his service, the petitioner was once again selected for the post of Workshop Superintendent/Lecturer and was appointed as such on 25th March, 1991, however, since the said appointment was ad hoc, the petitioner did not accept the same. Once again, the petitioner was selected as a Lecturer by the Gujarat Public Service Commission and has been appointed as such since 8th February, 1994. It is, therefore, submitted that the petitioner having been duly selected and appointed as Lecturer, his earlier service should be counted for the purpose of continuity, pay-fixation, pension, etc. Mr. Sahani has also relied upon Government Circular dated 20th July, 1999 issued by the Technical Education Examination Board and submitted that that is the prevailing policy of the State Government. Mr. Sahani has also relied upon the judgment of the Hon'ble Supreme Court in the matter of State of Haryana & Ors. v. Piara Singh & Ors., [1992 (4) SCC 118]. Mr. Sahani has particularly relied upon para 46 of the judgment. The Court in the said paragraph has observed that, 'an ad hoc or temporary employee should not be replaced by another ad hoc or temporary

employee; he must be replaced only by regularly selected employee. This is necessary to avoid arbitrary action on the part of the appointing authority'.

The contention that the petitioner's appointment was made after due selection and that the selection for appointment to the post of Assistant Lecturer was not required to be made by Gujarat Public Service Commission requires to be rejected. The contention has been raised for the first time today by making amendment to the petition ie., 11 years after the date of filing of this petition. Further, the petitioner had accepted the appointment order and he was bound by all the terms and conditions of the said appointment. Having availed the benefit of the appointment order, it does not lie in the mouth of the petitioner to say that the selection for appointment to the post of Assistant Lecturer was not required to be made by the Public Service Commission. The contention that the petitioner was duly selected by the Director of Technical Education also requires to be rejected. The interviews were held by the Principal of the Institute and the appointment order also had been made by the Principal of the Institute and only a copy of the said order had been sent to the Director of Technical Education. The contention is clearly contrary to the evidence on record and cannot be countenanced. It is true that once an ad hoc appointment is made, it should continue till the term of such appointment and such ad hoc appointee shall not be replaced by another ad hoc appointee. However, in the present case, the contention that several ad hoc appointees have been continued, who were junior to the petitioner, has been raised for the first time after 11 years from the date of the petition. Further, since he is discharged from service, the petitioner has been selected by the Gujarat Public Service Commission and has been appointed as Lecturer on regular basis on 8th February, 1994. Even before that, the petitioner was offered ad hoc appointment on 25th March, 1991. It appears that the petitioner was not willing to accept such temporary appointment. Whether or not to accept such appointment was the discretion of the petitioner and shall have no bearing on merits of this petition. By making amendment today, the petitioner has also contended that one Mr. T.D Patel, an ad hoc Lecturer was continued even after the petitioner's service was terminated on account of some dispute the management had with another ad hoc Lecturer one Shri Riyaz Vakil. The contention is not found in the petition and has been raised after 11 years which clearly appears to be an after thought. Besides, the aforesaid Shri T.D Patel was an adhoc Lecturer in Electrical Engineering and

his seniority vis-a-vis the petitioner, who was ad hoc Assistant Lecturer in Mechanical Engineering, cannot be a relevant factor so far as petitioner's discharge from service is concerned.

In above view of the matter, I do not consider it expedient to interfere in the present petition at this belated stage. It is, however, clarified that in the event the petitioner has any claim for continuity of service, pay fixation, etc., he may pursue his remedy with the administrative authorities. If the order is adverse to the petitioner, he shall also have liberty to challenge the same. Petition is dismissed. Notice is discharged.

[Miss R.M Doshit, J.]

Prakash*